

**ENVIRONMENTAL ADVOCATES**  
ATTORNEYS AT LAW

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March 6, 2015

Mike Smart, President  
Liberty Utilities (CalPeco Electric) LLC  
P.O. Box 107  
Tahoe Vista, CA 96148

Ian Robertson, CEO  
Algonquin Power & Utilities Corporation  
354 Davis Road  
Oakville, Ontario  
Canada L6J 2X1

Dear Mr. Smart and Mr. Robertson:

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that Liberty Utilities (CalPeco Electric) LLC and Algonquin Power and Utilities Corporation (hereinafter collectively "Liberty Utilities") have violated and are in ongoing violation of California Health & Safety Code § 25249.6, which provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual."

Pursuant to California Health & Safety Code § 25249.7, ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.

Identification of Liberty Utilities' Violations

Liberty Utilities' violations of California Health & Safety Code § 25249.6 occur when residents of California (as well as visitors to California, collectively hereinafter "Californians") are knowingly and intentionally exposed to chemicals used to treat wooden utility poles owned, operated, stored and/or maintained by Liberty Utilities. These wood treatment chemicals are known to the State of California to cause cancer or reproductive toxicity. The names and toxicity type(s) of these wood treatment chemicals listed under Proposition 65 are pentachlorophenol (cancer), hexachlorobenzene (cancer, developmental), polychlorinated dibenzo-p-dioxins (cancer), polychlorinated dibenzofurans (cancer), hexachlorodibenzodioxin (cancer), and 2,3,7,8 tetrachlorodibenzo-*p*-dioxin (cancer, developmental) (collectively hereinafter "wood treatment

chemicals”). Liberty Utilities is knowingly and intentionally exposing Californians to these wood treatment chemicals without providing any clear and reasonable warnings as to these chemicals’ toxicity.

The wood treatment chemicals listed above have been added to wooden poles by dissolving them into various hydrocarbons such as oil, creosote and/or methylene chloride, and then forcing them under pressure into the wooden poles. These chemicals then ooze out of the poles. Wood treatment chemicals are thus on the surface of the poles and they are washed off the poles when it rains. Wood treatment chemicals also drip or ooze into soil or onto pavement/concrete at the base of the poles.

On information and belief, ERF alleges that both Liberty Utilities (CalPeco Electric) LLC and Algonquin Power and Utilities Corporation own and control the utility poles at issue herein, and that both are therefore operators of the poles. Even if Liberty Utilities (CalPeco Electric) LLC has legal title to the poles and Algonquin Power and Utilities Corporation lacks such legal title, on information and belief, ERF alleges that Algonquin Power and Utilities Corporation controls and directs Liberty Utilities (CalPeco Electric) LLC, and has authority to and has exercised such authority to direct Liberty Utilities (CalPeco Electric) LLC to maintain the poles without providing the clear and reasonable warnings concerning Californians’ exposures to the wood treatment chemicals associated with the poles at issue. As such, Algonquin Power and Utilities Corporation is also legally responsible for the violations of California Health & Safety Code § 25249.6 set forth in this letter.

Californians are exposed to these wood treatment chemicals at every wooden utility pole (commonly referred to as "telephone poles") treated with pentachlorophenol that Liberty Utilities owns, operates, stores and/or maintains in the State of California in Liberty Utilities’ electrical distribution grid or network located in the following counties: Alpine, El Dorado, Lassen, Mono, Nevada, Placer, Plumas, and Sierra. Such utility poles are placed next to public thoroughfares, in farm fields and other open land, and other public and private property. These exposures further occur wherever those poles are located within these counties that Liberty Utilities has taken out of service and then sold or donated to be used for things such as parking facilities and landscaping (to the limited extent Liberty Utilities’ poles are sold or donated to others, they are consumer products).

Environmental and consumer product exposures to the wood treatment chemicals in Liberty Utilities’ utility poles occur through dermal absorption, ingestion, and inhalation routes. Californians are exposed to these chemicals dermally when they touch or otherwise make contact with Liberty Utilities’ poles with their bare skin and when they touch paper that has been affixed to the poles that has absorbed the chemicals from the poles. Californians absorb these chemicals through the skin and ingest them through hand-to-mouth, and hand-to-food-to-mouth behavior such as eating food or biting fingernails. Californians are exposed to Liberty Utilities’ wood treatment chemicals when persons’ clothing makes contact with the poles when such persons lean against or otherwise contact the poles and then they or others make contact with this clothing (when changing clothes, doing laundry, and so forth). Californians are exposed to Liberty Utilities’ wood treatment chemicals when they step in or on the oily rings/deposits of wood treatment chemicals that collect on sidewalks, lawns, or soils at the base of poles. Californians are exposed to Liberty Utilities’ wood treatment chemicals when they come into contact with splinters or sawdust that fall off of poles through normal wear and tear, attaching and removing fixtures on poles, or maintenance work on poles (that includes drilling holes into poles).

Californians are exposed to wood treatment chemicals when they come into contact with stormwater runoff from Liberty Utilities' utility poles (such as by walking on sidewalks or in streets where such stormwater runoff occurs and by picking up contaminants on their shoes or clothing). Californians are exposed to wood treatment chemicals when pets come into contact with the poles, the oily rings or deposits of wood treatment chemicals that collect on sidewalks, lawns or soils at the base of poles, or the stormwater runoff from poles, and Californians then make contact with such pets (by petting them, holding them, bathing them, and so forth). Californians come into contact with wood treatment chemicals when they track oils, soils, or water on their shoes, feet, or clothing into their homes or businesses and then touch or ingest the chemicals. Californians breathe dust impregnated with Liberty Utilities' wood treatment chemicals when the wind blows such dust into the atmosphere. They ingest the dust when it falls on their food, such as on vegetables and fruits grown in their gardens. Californians eat fish caught from water bodies into which Liberty Utilities' wood treatment chemicals flow and thus ingest these chemicals, which have moved up the food chain into the flesh of fish and shellfish. Californians are exposed to Liberty Utilities' wood treatment chemicals when they consume animal fat – such as milk, cheese, ice cream, and beef – from animals that have ingested Liberty Utilities' wood treatment chemicals and then concentrated those chemicals in their fat tissues. Children are exposed to Liberty Utilities' wood treatment chemicals when they eat dirt that has become contaminated with the chemicals, when they touch poles when playing games like tag or hide-and-go-seek, and when they ingest breast milk from their mothers who were exposed to Liberty Utilities' wood treatment chemicals in the ways discussed above (when such these chemicals have concentrated into the breast milk used to feed infants). These chemicals cross the placenta, resulting also in exposures to human fetuses.

Californians are also exposed to wood treatment chemicals by making contact with the used utility poles or parts of utility poles that Liberty Utilities has sold or given away to consumers for the latter's uses for various purposes, such as wooden fences, retaining walls, deck construction and so forth. The Californians who have acquired and made use of such poles, as well as their family members and guests, are experiencing on-going exposures to wood treatment chemicals in their repeated contacts with wooden structures made from these poles.

Occupational exposures of wood treatment chemicals also occur through dermal, inhalation, and ingestion routes. Occupational exposures occur when Liberty Utilities employees such as line workers come in direct contact with wooden utility poles as part of their occupation, and make skin contact with a pole surface or make skin contact with used gloves or clothing that have touched poles. The wood treatment chemicals are then absorbed through the skin and are ingested through hand-to-mouth behavior such as eating a sandwich or the biting of fingernails. These wood treatment chemicals are also absorbed from wood slivers that have punctured the skin. Occupational exposures also occur when employees inhale or ingest contaminated dust kicked up from the base of poles, or touch or ingest water running off of poles or at the base of poles.

#### Time Period of Violations

Liberty Utilities' above described violations have occurred every day since at least since three years prior to the date of this letter and will continue every day until Liberty Utilities provides clear and reasonable warnings to those exposed.

### Location of Violations

Liberty Utilities' above described violations, *i.e.*, exposures of Californians to substances known to the State to cause cancer and reproductive harm without clear and reasonable warnings, occur both on and off the property owned or controlled by Liberty Utilities in each of the following counties: Alpine, El Dorado, Lassen, Mono, Nevada, Placer, Plumas, and Sierra. Such violations have occurred and are occurring at each and every pentachlorophenol-treated utility pole presently owned, operated, stored, or maintained by Liberty Utilities or formerly owned by Liberty Utilities and subsequently conveyed to consumers in these counties. However, ERF alleges that Liberty Utilities' occupational exposure violations occur only at utility poles installed in Liberty Utilities' electrical distribution grid and at corporate yard locations in these counties where Liberty Utilities stores new and used poles in California.

### Notice for Occupational Exposures Governed by the California State Plan for Occupational Safety and Health

In accord with California Code of Regulations, title 8, section 338, subdivision (b), ERF hereby gives you the following notice:

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

### ERF Contact Information

The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director  
Ecological Rights Foundation  
867 B Redwood Drive  
Garberville, California 95542

ERF has retained the following counsel to represent them in this matter:

Christopher Sproul  
Environmental Advocates  
5135 Anza Street  
San Francisco, California 94121  
Phone: (415) 533-3376  
E-Mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

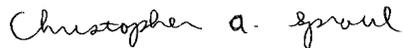
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Fredric Evenson  
Ecology Law Center  
P.O. Box 1000  
Santa Cruz, California 95061  
Telephone: (831) 454-8216  
Email: evenson@ecologylaw.com

Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is attached hereto. Pursuant to Title 27, C.C.R. § 25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" is also enclosed.

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Cordially,



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Christopher Sproul  
Environmental Advocates

Enclosures

cc: Kamala Harris, Attorney General of California and the California Attorney General's Office  
Prop 65 Coordinator (without "Proposition 65: A Summary" attachment) (with additional  
confidential factual information supporting Certificate of Merit)

District Attorneys for California's applicable Counties (see list attached to Certificate of Service)  
(without "Proposition 65: A Summary" attachment)

**APPENDIX A**

**SERVICE LIST**

Kamala Harris, Attorney General of California  
Proposition 65 Coordinator  
California Attorney General's Office  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-1499

Office of the District Attorney  
County of Lassen  
220 S. Lassen Street, Suite 8  
Susanville, CA 96130

Liberty Utilities (CalPeco Electric) LLC  
C/O Registered Agent, CT Corporation System  
818 West Seventh Street, 2<sup>nd</sup> Floor  
Los Angeles, CA 90017

Office of the District Attorney  
County of Mono  
P.O. Box 2053  
Mammoth Lakes, CA 93546

Mike Smart, President  
Liberty Utilities (CalPeco Electric) LLC  
P.O. Box 107  
Tahoe Vista, CA 96148

Office of the District Attorney  
County of Nevada  
201 Commercial Street  
Nevada City, CA 95959

Ian Robertson, CEO  
Algonquin Power & Utilities Corporation  
354 Davis Road  
Oakville, Ontario  
Canada L6J 2X1

Office of the District Attorney  
County of Placer  
10810 Justice Center Drive Suite #240  
Roseville, CA 95678

Office of the District Attorney  
County of Alpine  
17300 Hwy. 89  
P.O. Box 248  
Markleeville, CA 96120

Office of the District Attorney  
County of Plumas  
520 Main St., Room 404  
Quincy, CA 95971

Office of the District Attorney  
County of El Dorado  
515 Main Street  
Placerville, CA 95667

Office of the District Attorney  
County of Sierra  
P.O. Box 457  
Downieville, CA 95936

**CERTIFICATE OF MERIT**

I, Christopher Sproul, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party, Ecological Rights Foundation.

(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.

(4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

(5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), *i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 6, 2015

*Christopher A. Sproul*  
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**CERTIFICATE OF SERVICE**

I am over the age of 18 years and not a party to the within action. On March 6, 2015, I served the following documents:

Notice of Violation of California Health and Safety Code §25249.6, including attachment "Proposition 65: A Summary"; and Certificate of Merit

on:

Mike Smart, President of Liberty Utilities (CalPeco Electric) LLC, and Liberty Utilities (CalPeco Electric) LLC, C/O Registered Agent, CT Corporation System

by sending them from Berkeley, California via First Class United States Mail (via certified mail, return receipt requested) and on

Ian Robertson, CEO of Algonquin Power & Utilities Corporation

by sending them from Berkeley, California via First Class United States Mail and on the individuals identified in the list attached hereto as Appendix A (without the attachment "Proposition 65: A Summary") (with Confidential Letter and attachments to Attorney General Kamala Harris and California Attorney General's Office Prop 65 Coordinator providing, in accord with Title 11 C.C.R. §§ 3100, 3101 and 3102, confidential factual information supporting Ecological Rights Foundation's Certificate of Merit) by sending them also from Berkeley, California by First Class United States Mail.

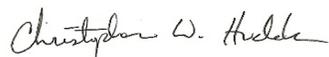
On March 6, 2015, I also served the following documents electronically through the Attorney General's online Prop 65 filing feature at <https://oag.ca.gov/prop65/add-60-day-notice>:

Notice of Violation of California Health and Safety Code §25249.6 (without the attachment "Proposition 65: A Summary"); Certificate of Merit; and Confidential Letter to Attorney General Kamala Harris and California Attorney General's Office Prop 65 Coordinator providing, in accord with Title 11 C.C.R. §§ 3100, 3101 and 3102, confidential factual information supporting Ecological Rights Foundation's Certificate of Merit

on:

Attorney General Kamala Harris and the California Attorney General's Office Prop 65 Coordinator.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 6, 2015 at Berkeley, California.



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Christopher Hudak